

Tenancy Working Group Joint Submission to the Residential Tenancies Act Review



The Tenancy Working Group (TWG) is a network convened by the Federation of Community Legal Centres Victoria. We are a group of community legal centres, community organisations, supported by Victoria Legal Aid, who provide assistance to people with their tenancy matters. A list of the members of the TWG is set out below. We predominantly work with tenants who are disadvantaged and have complex needs in relation to their tenancies, caravan and residential park and rooming house agreements. We offer support by way of advice, advocacy and negotiation, and direct representation at hearings.

Collectively we assisted with over **26,735** tenancy matters throughout Victoria in the 2015-16 financial year. As a network we see more tenants than any other group in Victoria and offer a unique and valuable viewpoint about those most vulnerable to homelessness.

The number of people needing to access our services continues to grow as the number of people facing housing stress and homelessness rises. In 2014-15 256,000 people accessed homelessness services across Australia¹.

People accessing support services are likely to be experiencing other issues such as family violence, mental illness or disability. Aboriginal people are also overrepresented as homelessness service users, with 1 in 4 people seeking assistance being Aboriginal or Torres Strait Islander².

As the Labor Government recognises, 'all Victorians have a right to safe, affordable and secure housing'³. This is most vital for Victorians who live in precarious housing arrangements, for whom inadequate reforms to the *Residential Tenancies Act 1997* (RTA) could mean the difference between having a home and not having one.

Any reforms to the RTA must also be viewed in the broader policy context of increased rental unaffordability and social housing decline. In addition, the potential loss of Federal funding for the National Partnership Agreement on Homelessness will put further strain on homelessness services and means that it is all the more important to increase security for tenants and to reduce unnecessary evictions.

Many TWG member organisations have individually provided submissions to the RTA Review Issues Papers throughout the review process. Together we take this opportunity to highlight the basic safeguards that must be included in the Options Paper that will be released later this year. These safeguards are needed to protect vulnerable and disadvantaged Victorians from further housing stress and homelessness. It is our collective position, as informed by our experience in assisting clients, that RTA reform options must include the following:

¹ Australian Institute of Health and Welfare, Specialist homelessness services 2014-15 <http://www.aihw.gov.au/homelessness/specialist-homelessness-services-2014-15/>

² Ibid

³ Labor's Plan for Fairer, Safer Housing Nov 2014

Level 3
225 Bourke Street
Melbourne
Victoria 3000

Tel: 03-9652 1500
Fax: 03-9654 5204
administration@fclc.org.au
www.communitylaw.org.au

Federation of
Community Legal Centres
(Victoria) Inc
Registration A0013713H
ABN 30 036 539 902

1. Reduce barriers to housing

Barriers to the private rental market are a significant cause of disadvantage for many Victorians. Difficulties faced by vulnerable and disadvantaged tenants include financial barriers and discrimination.

1.1 Reduce the opportunity for discrimination by landlords and real estate agents through the introduction of a prescribed application form and prescribed written reference form.

- Restrict information that can be collected to prescribed relevant material. This would include standardised written references from previous rental history in place of a verbal reference.

1.2 Ensure that tenants have access to efficient and fair return of their bond through enforcement of section 414(2) and section 417(2) *An application under this section must be made within 10 business days.*

- Strengthen enforcement to ensure that the bond is returned to the tenant in a timely manner. Section 414(2) and section 417(2) exists in the RTA for this reason however they do not operate as intended due to the standard practice for VCAT to waive this requirement.

1.3 Protect tenants from 'unjust' tenancy database listings through introducing legislation similar to that provided in NSW, QLD, WA and ACT.

- Provide greater protection from unjust database listings in-line with other Australian jurisdictions. This would ensure that tenants could not be listed on a database as a result of unexpected hardship, such as family violence.

1.4 Prevent compensation from being awarded for lease breaking on hardship grounds.

- Where a tenant breaks their lease due to unforeseen hardship VCAT should not award compensation to the landlord. If a tenant can prove unforeseen hardship, compensation is not an appropriate recourse. Whilst a landlord may incur financial pressure in these instances this should be considered a business cost.

2. Ensure liveable and appropriate housing

Safe and properly maintained rented housing is vital to the health and wellbeing of tenants. Those living in substandard housing are most likely to be socioeconomically disadvantaged and are more likely to be restricted in accessing their rights due to a lack of alternative housing options.

2.1 Introduce minimum standards for all rented premises that cover health, safety and efficiency.

- Provide legislated minimum standards to ensure all tenants have access to housing that is safe, healthy and efficient. Allow for independent enforcement and protections for vulnerable tenants.

2.2 Ensure landlords cannot unreasonably withhold consent for the installation of fixtures. This section should include references to the Equal Opportunity Act 2010 (Vic).

- Ensure housing is appropriate for people's needs to promote longer tenancies and greater accessibility of housing for people with disabilities.

2.3 Implement a simpler more accessible process for repairs.

- Tenants often do not access their rights for repairs as they fear retaliation through rent increases or notices to vacate. The process should be simplified with enhanced protections against retaliation.

3. Enhance eviction prevention

Improve safeguards to prevent unnecessary and unfair evictions to create more secure housing and longer tenancies.

3.1 Abolish Notices to Vacate for no specified reason across all tenure types.

- Create stronger, fairer tenancies by legislating that the landlord must have a prescribed reason for issuing a notice to vacate. This will give greater confidence to tenants to access their rights and reduce unfair evictions.

3.2 Create fairer compliance orders through introducing a 6 month time-limit. Also amend section 332 to give the Tribunal discretion where they are satisfied that the breach was trivial or has been remedied as far as possible or that there will be no further breach of duty.

- Strengthen safeguards for vulnerable and disadvantaged tenants to resolve breaches through alternative mechanisms that result in maintained tenancies.

3.3 Provide stronger protections for tenants struggling financially by introducing a pre-eviction checklist for rent arrears.

- Ensure eviction is a last resort by requiring the landlord to undertake steps to resolve problems through a prescribed pathway before issuing a notice to vacate. This will result in greater protections from eviction and homelessness for those most in need.

3.4 Reduce unfair and unnecessary evictions by introducing a reasonableness requirement for making a possession order.

- Require VCAT to consider certain factors when determining whether to issue a possession order. This will reduce unnecessary and unfair evictions by ensuring that eviction is only used as a remedy where it is proportionate and appropriate.

4. Create fair and equitable access to justice

Dispute resolution mechanisms should address power imbalances, recognise human rights, be flexible and responsive and protect consumers.

4.1 Provide appropriate dispute resolution processes that recognise the imbalance of power that exists between the landlord and the tenant.

- Whilst informal dispute resolution mechanisms are desirable in residential tenancies, these must be implemented in a manner that fits the context. For example, it is not appropriate for tribunal members to attempt to mediate an outcome. If mediation is appropriate - this needs to occur prior to, and independent of, VCAT.

4.2 Improve the accountability and consistency of decision making at VCAT.

- Introduce internal appeals in the Residential Tenancies List at VCAT, and enable written reasons to be requested after a hearing to improve accountability at VCAT.

4.3 Increase tenant attendance at VCAT.

- VCAT should work with Aboriginal and Torres Strait Islander organisations to introduce a Koori day at VCAT, increase access to phone and Skype hearings, and require registry staff to contact tenants prior to possession order hearings or VCAT case workers to engage with tenants to arrange flexible arrangements.

The Tenancy Working Group supports the implementation of the Royal Commission into Family Violence recommendations for reform of the RTA.

Tenancy Working Group members

Barwon Community Legal Service

Eastern Community Legal Service

Fitzroy Community Legal Service

Gippsland Community Legal Service

Housing for the Aged Action Group

Hume Riverina Community Legal Service

Inner Melbourne Community Legal

Justice Connect Homeless Law

Loddon Campaspe Community Legal Centre

Peninsula Community Legal Service

Springvale Monash Legal Service

Tenants Union of Victoria

Victoria Legal Aid

Victorian Aboriginal Legal Service

West Heidelberg Community Legal Service at Banyule Community Health

WEstjustice

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HOUSING FOR THE AGED ACTION GROUP INC.



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community legal service



INNER MELBOURNE
COMMUNITY LEGAL



SPRINGVALE MONASH
LEGAL SERVICE Inc.



WEST HEIDELBERG
COMMUNITY
LEGAL SERVICE



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